

JAMES C. BENTLEY
Claimant

ENERGY ONE, INC.
Respondent

HARTFORD INSURANCE COMPANY
Insurance Carrier

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ORDER

Claimant appeals the November 19, 1999, Order Denying Compensation of Administrative Law Judge Pamela J. Fuller wherein the Administrative Law Judge denied claimant temporary total disability compensation, medical treatment and payment of past medical bills.

ISSUES

Did the Administrative Law Judge err in denying claimant medical treatment, payment of medical bills and temporary total disability benefits?

Respondent alleges claimant suffered intervening injuries with post-injury employers between his February 1995 release by Michelle A. Klaumann, M.D., and September 25, 1998, when he first requested medical care with John C. Medlen, M.D., in Tucson, Arizona.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record, the Appeals Board finds for preliminary hearing purposes as follows:

Claimant suffered accidental injury on July 13, 1994, while working for respondent in Kansas. Claimant was a roughneck and was lifting a 100-pound sack of mud when he slipped and fell, injuring his low back. Claimant had immediate symptoms down his right leg and was referred to Michelle A. Klaumann, M.D., in Wichita, Kansas, for treatment.

Dr. Klaumann, an orthopedist, treated claimant conservatively for a period of several months. During the treatment, claimant underwent x-rays, a CT and myelogram, all of which indicated a mild bulge at L3-4, but with no spinal stenosis and no disc herniation.

Dr. Klaumann's notes indicate significant concern over claimant's drug use, as a mental evaluation was scheduled in August 1994 to ascertain what events led up to an apparent overdose of drugs. There were several telephone conversations between claimant and the doctor's office regarding the claimant's attempt to renew drug prescriptions. Most of these requests were denied.

By October 1994, claimant was incarcerated due to probation violations and, while in jail, was denied use of a TENS unit which had been prescribed by the doctor. During the February 3, 1995, examination, Dr. Klaumann noted that, while claimant limped during the examination, when he was alone and walking down the hall, he did not limp. Dr. Klaumann also noted during the examination several Waddell-Sims signs were present, indicating that claimant was a symptom-magnifier. Dr. Klaumann released claimant without restrictions and with a zero functional impairment, indicating he had no limitations on his ability to return to work.

Claimant's work history is somewhat clouded between February 1995 and September 1998, when he next sought medical treatment. Claimant alleges that he had ongoing significant back problems, although no medical records indicate he sought medical treatment before seeing John C. Medlen, M.D., an orthopedic surgeon in Tucson, Arizona, in September 1998. During this time, claimant worked with several different companies as an oil roughneck and, after moving to Tucson, Arizona, in 1995 or 1996, as a landscaper, doing yard work and maintenance work. He then obtained a job with Intermountain Color, Inc., as a press assistant. Claimant testified that none of the jobs he worked after 1995 injured his back but, on cross-examination, acknowledged he suffered an increase in symptoms while working several of the jobs.

When claimant first requested treatment with Dr. Medlen, he failed to mention that he had suffered a lifting injury in July 1994 with respondent. The history provided by claimant indicated an injury eleven years before, which would be approximately 1987. Claimant initially denied having any back injuries before the July 13, 1994, alleged accident with respondent. However, on cross-examination, claimant admitted that, while working before July 1994, he suffered some type of injury to his back, the extent of which is unknown, which required that he seek treatment with a chiropractor. Those medical records were not available at the preliminary hearing. Claimant also acknowledged that while in jail, on several occasions, he was forced to seek pain medication for his back, but denied any new injury.

During Dr. Medlen's examination and treatment, claimant underwent additional x-rays and an MRI. These tests revealed mild discogenic degenerative disc disease and

herniated lumbar discs at L3-4 and L4-5. Dr. Medlen's medical records indicate that claimant suffered a sudden onset of pain in 1998 while in bed. As claimant twisted to leave the bed, he felt a sudden severe pain going down into his leg. Claimant's surgery was scheduled for November 20, 1998, with the surgery to consist of the insertion of posterior spine instrumentation and a two-level fusion. However, on October 30, 1998, claimant fell down a flight of stairs at his mother's house, resulting in emergency surgery to his back that day.

Claimant contacted his then current employer, Intermountain Color, Inc., and obtained authorization through Intermountain's insurance company for the October 1998 surgery with Dr. Medlen. Claimant filed an E-3 Application for Preliminary Hearing in this matter on July 28, 1999, requesting the authorization of Dr. Medlen as the treating physician and payment of claimant's medical expenses associated with the October 30, 1998, back surgery.

The Administrative Law Judge, at the conclusion of the preliminary hearing, denied claimant's request for ongoing medical treatment, authorization of Dr. Medlen, payment of past medical treatment for the surgery and temporary total disability compensation. However, there was no reason given by the Administrative Law Judge for this denial of benefits. The primary dispute in this matter deals with whether claimant suffered an intervening injury with his various employers after his release by Dr. Klaumann in February 1995.

The medical records show claimant suffered an injury in 1994 while working for respondent, which resulted in some physical symptoms and a mild disc bulge at L3-4 with no spinal stenosis or disc herniation noted. The tests on claimant in 1998 uncover a substantially more severe injury, including disc herniations at two levels in the lumbar spine. These findings led to the recommendation by Dr. Medlen that claimant undergo a two-level fusion and insertion of instrumentation. While claimant denies any intervening injury, claimant's work history tells a different story. Claimant acknowledges working as an oil roughneck for several different companies and then working for approximately three years as a landscaper and as a press assistant in Tucson before seeking medical treatment with Dr. Klaumann. Claimant also acknowledges suffering a sudden onset of pain while exiting bed early one morning, and also acknowledges a traumatic fall down a flight of stairs which led to emergency surgery approximately three weeks prior to the original scheduled surgery. The record, as a whole, shows a claimant whose condition has substantially worsened since his release by Dr. Klaumann in 1995. That release involved no limitations, no functional impairment and no work restrictions of any kind.

The Appeals Board finds that claimant has failed to prove an association with his current request for medical treatment, including the surgery performed by Dr. Medlen, and the July 13, 1994, injury suffered with respondent. Therefore, the denial of benefits by the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Pamela J. Fuller of November 19, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 2000.

BOARD MEMBER

c: Seth G. Valerius, Topeka, KS
Richard L. Friedeman, Great Bend, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director